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08 JUL 11 PM 4:44

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOMER E. HAWKINS (3)

CDC ID: C-55875

IRONWOOD STATE PRISON

P.O. Box = 2199

Blythe, CA. 92226

UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF CALIFORNIA

HOMER E. HAWKINS (3)

CASE No. 08-1087-SI (pr)

Petitioner

RESPOND TO ANSWER

Vs.

&

FILING A (TRAVERSE)

DEBORAH DEXTER, Warden

Respondent.

Pursuant to the Courts order, Petitioners Return Traverse as hereby makes this return to the "COURTS & ATTORNEY GENERAL" office for Writ of Habeas Corpus and Denies allegation as [A-G] makes inequat theory of dispute's.

Simple stated this petitioner respond about the court's numerous violations of clearly established Federal Law pretaining to petitioner criminal trial proceedings. Said violations are fully elaborated in Exhibit's and Arguments doing petitioner entire State court proceedings were fundamentally unfair and in violation of petitioner procedural Due Process rights under the "6th, 8th, and 14th amendment

1 of the United States Constitution.

2 Petitioner denies each allegation in Respondent's Return
3 and ask for relief.

4
5 (a) Presumption of correctness accorded to findings of facts made
6 by state court on federal habeas review also applies to factual findings
7 made by state trial record.

8 (b) State court decision is "CONTRARY TO" Supreme Court
9 precedent, warranting federal habeas relief, if state court arrives at
10 conclusion opposite to that, that reached by Supreme Court on question
11 of law, or if state court confronts facts that are materially indistinguish-
12 able from relevant U.S. Supreme Court precedent and arrives at different
13 result.

14 (c) State court decision is "CONTRARY TO" U.S. Supreme
15 Court precedent, warranting federal habeas relief, if state court applies
16 rules that contradicts Governing Law set forth in that precedent.

17 (d) State court decision involves "UNREASONABLE APPLICATION
18 OF" clearly established U.S. Supreme Court precedent, warranting fed-
19 eral habeas relief, if state court identifies correct governing legal
20 rule from Supreme Court cases, but unreasonably applies it's facts
21 of particular case.

22 (e) State trial court refusal to provide indigent defendant
23 charged with aggravated felony's and not potential mitigation evidence
24 that was significant to investigation by "FINGER & CLOTHING"
25 expert's at trial and sentencing phase of trial.

26 (f) State criminal trial is fundamentally unfair because
27 state proceeds against indigent defendant without making certain
28

1 that petitioner has access to raw materials integral to building
2 effective defense.

3 (g) The petitioner has bears the burden of showing that the
4 state court's decision was unreasonable. And even though a constitutional
5 error have occurred, Habeas relief is available only in error where "substan-
6 tial and injurious effect or influence in determining the jury's verdict.

7 (h) United States Supreme Court has expressly recognizing a
8 federal constitutional right to instructions on lesser included offenses
9 in noncapital cases. And not in "THEORY" as Attorney General might
10 constitute an exception felony murder cases to the general rule, there
11 must be substantial evidence to warrant instruction on the lesser included
12 offense.

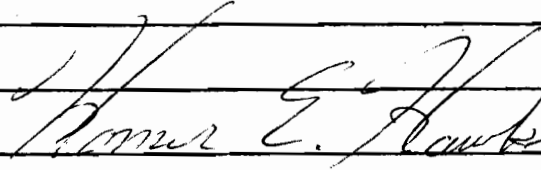
13 (I) The judge's decision amounted to a judicial usurpation of
14 power or be characteristic of an erroneous practice which is likely to
15 recur.

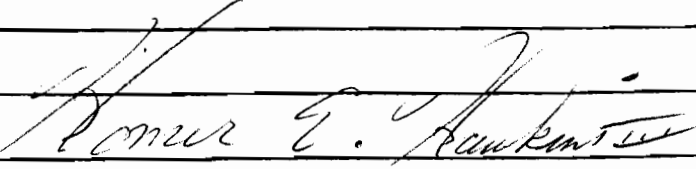
16 (j) As petitioner explained earlier, the habeas corpus relying on
17 the "NEW CUNNINGHAM-CONSTITUTIONAL RULE", and a rule is only
18 "NEW" when it was declared after the petitioner case became final on
19 direct review. Hence, petitioner whose case became final after "APPRENDI-
20 JUNE 26, 2000" but before "BLAKELY-JUNE 24, 2004" can argue that
21 appendi "Dictated" the result in Cunningham, because Appendi used the
22 phrase "STATUTORY MAXIMUM SENTENCE" to define the upper limit of a
23 permissible sentence under the "SIXTH AMENDMENT; and Cunningham
24 claims necessarily attack the highest of three possible sentences, all
25 of which the Legislature had authorized. Nevertheless, constitutional law
26 trumps common sense in the courts, and it was not until "Blakely" that
27 the U.S. Supreme Court provided a constitutional explanation of what it had
28

1 meant in "Apprendi" by the phrase "STATUTORY MAXIMUM SENTENCE".

2
3 This Traverse is based on the prohibition of cruel and
4 unusual punishment and the sentence handed down by the trial court.
5 The petitioner wish this court to take judicial notice in light of this
6 argument and pray that relief be granted and an order to Department
7 of Corrections of petitioner conviction be stricken in the interest
8 of justice.
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15 DATED: July 9, 2008
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21 Respectfully Submitted,
22

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24 
25 HOMER E. HAWKINS (3)
26 In Pro. Se.
27
28

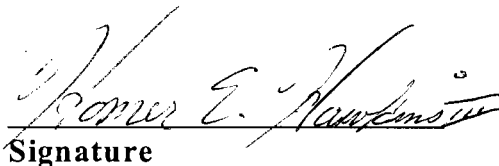
CERTIFICATE OF SERVICE

Case Name: HOMER E. HAWKINS (S) v. DEBORAH DEXTER, WardenCase No.: 08-1087-SI (pr)

IMPORTANT: You must send a copy of ALL documents filed with the court and any attachments to counsel for ALL parties in this case. You must also file a certificate of service with this court telling us that you have done so. You may use this certificate of service as a master copy, fill in the title of the document you are filing and attach it at the back of each filing with the court. Please list below the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below. You must attach a copy of the certificate of service to each of the copies and the copy you file with the court.

I certify that a copy of the RESPOND TO ANSWER & FILING A TRAVERSE
(Name of document you are filing,
i.e., opening brief, motion, etc.)

and any attachments was served, either in person or by mail, on the persons listed below.



Signature

Notary NOT required

NameAddressDate Served

UNITED STATE DISTRICT
COURT
NORTHERN DISTRICT OF
CALIFORNIA
450 GOLDEN GATE, AVE.
SAN FRANCISCO, CA. 94102

450 GOLDEN GATE, AVE.
San Francisco, CA. 94102

July 9, 2008

DEPARTMENT OF JUSTICE
Office of the Attorney General
455 Golden Gate, Ave. # Suite - 11000
San Francisco, CA. 94102-3664

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July 9, 2008

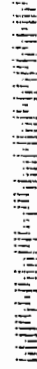
HOMER E. HAWKINS (3)
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ATTN:

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CALIFORNIA
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